

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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Marshall E. Bloomfield,
Petitioner-Judgment Creditor

Index No: 07 CIV 3934

Hon. Richard J.
Holwell U.S.D.J.

-against-
Dermot MacShane,

Respondent-Judgment Debtor

And

Sergeant's Benevolent Association
Annuity Fund, The City of New York
Police Pension Fund, and the Fund
Office of Local 580 of Architectural
and Ornamental Iron Workers,

Respondents.

-----X

To: Colleran, O'Hara & Mills LLP
Attorneys for Respondent Local 580 of
Architectural and Ornamental Iron Workers
1225 Franklin Ave STE 450
Garden City NY 11530
516-248-5757

O'Dwyer & Bernstein LLP
Attorneys for Respondent Sergeant's
Benevolent Association Annuity Fund
52 Duane ST 5FL
New York NY 10007

Dermot MacShane
Judgment Debtor-Respondent Pro Se
1030 Hollywood Ave
Bronx NY 10463

Dermot MacShane
Judgment Debtor-Respondent Pro Se
72 Rockledge RD APT M
Hartsdale, NY 10530

Corporation Counsel for the City of New York
Attorneys for The City of New York Police Pension Fund
100 Church ST
New York NY 10007

MEMORANDUM OF LAW

Petitioner-Judgment-Creditor/Movant submits this
Memorandum in support of its Notice of Motion to Remand the
instant matter to New York State Supreme Court Putnam County.
This action was improperly removed from Putnam County because
it is an action involving, in part, a Domestic Relations
Order originating in Putnam County.

FACTS

This is petition to enforce a decision issued in a the matrimonial action of MacShane v. MacShane. The action was commenced in the Supreme Court of the State of New York County of Putnam under index number 1798/2002. During court proceedings in Putnam County, Justice Fred L. Shapiro, issued a domestic relations order from the bench wherein he held on the record, "there will be no distribution of any assets to Mr. MacShane without you [Mr. Bloomfield] being heard, and it would be my intention to give you your fee off the top of any distribution [emphasis supplied]. " See, "Exhibit B" of the Accompanying Bloomfield Affidavit. Included in any distribution were funds held by the respondents hereto.

Petitioner, believing that a distribution occurred in the matrimonial action sought equitable relief from the Putnam County State Court to enforce the above referenced order. Subsequent thereto, Respondent the Fund Office of Local 580 of Architectural and Ornamental Iron Workers, without notice to petitioner, removed this matter to the Southern District of New York. The facts of this matter are fully set forth in the underlying papers and in the accompanying Affidavit of Petitioner Marshall E. Bloomfield.

ARGUMENT

State Courts Remain the Best Venue to Hear Matrimonial Actions

As Judge Harold Baer, Jr. of this Court recognized in Anonymous v. Anonymous, 2001 U.S. Dist. Lexis 20928 (S.D.N.Y. 2001), "[i]t has long been the practice of federal courts to

discourage adjudication of domestic relations disputes in federal courts."

In the case remanded herein, Mr. Bloomfield's lien and judgment are the product of a domestic relations order made by the Supreme Court of the State of New York County of Putnam in the underlying matrimonial action.

While it is true that Mr. Bloomfield's action seeks recovery of his attorney's fees for services rendered to Mr. MacShane, and there may be an issue as to whether attorney's fees may be collected from a pension through a Qualified Domestic Relations Order ["QDRO"], as this Court cannot issue or modify a QDRO, Mr. Bloomfield would be barred from receiving any relief in this venue. See, Ankenbrandt v. Richards, 504 U.S. 689,703; Anonymous v. Anonymous, 2001 U.S. Dist. Lexis 20928; Hunter v. Ameritech, 779 F. Supp. 419, 421 (N.D. Ill. 1991); Jones v. American Airlines, Inc., 571 F. Supp. 2d. 1224, 1232 (D. Wyo. 1999).

As Judge Baer concluded in Anonymous v. Anonymous, 2001 U.S. Dist. Lexis 20928, where the relief sought by the movant therein was either a declaratory judgment as to whether attorney's fees could be awarded in a QDRO, or a modification of the QDRO, the Southern District of New York "lacks subject matter jurisdiction over the action."

Accordingly, this court should abide by Judge Baer's prior holding in Anonymous v. Anonymous, 2001 U.S. Dist. Lexis 20928.

CONCLUSION

As Mr. Bloomfield is seeking equitable relief with respect to a domestic relations order, this Court lacks jurisdiction to hear his proceeding that seeks enforcement relative to an underlying domestic relations order.

Thus, this matter should be remanded to the Supreme Court of the State of New York, County of Putnam.

Dated: June 25, 2007
Bronx, New York

Yours, etc.,

Marshall E. Bloomfield, Esq.
Petitioner-Judgment Creditor/Movant
349 E 149th St
BX NY 10451-5603
(718) 665-5900 <> (212) 662-1870

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AFFIDAVIT OF SERVICE

And
 Sergeant's Benevolent Association
 Annuity Fund, The City of New York
 Police Pension Fund, and the Fund
 Office of Local 580 of Architectural
 and Ornamental Iron Workers,
 Respondents.

STATE OF NEW YORK)

SS:

COUNTY OF THE BRONX)

William J. Knoesel, being duly sworn, deposes and says;

1) Deponent is not a party to the action, is over 18
 years of age and resides within the County of the Bronx.

2) That on the 26th day of June, 2007, Deponent served
 the within and attached document(s); Notice of Motion for
 Remand and Supporting Papers, and a Memorandum of Law upon:

Colleran, O'Hara & Mills LLP Attorneys for Respondent Local 580 of Architectural and Ornamental Iron Workers 1225 Franklin Ave STE 450 Garden City NY 11530	O'Dwyer & Bernstein LLP Attorneys for Respondent Sergeant's Benevolent Association Annuity Fund 52 Duane ST 5FL New York NY 10007	Dermot MacShane Judgment Debtor-Respondent Pro Se 1030 Hollywood Ave Bronx NY 10463
Corporation Counsel for the City of New York Attorneys for The City of New York Police Pension Fund 100 Church ST New York NY 10007	Dermot MacShane Judgment Debtor-Respondent Pro Se 72 Rockledge RD APT M Hartsdale, NY 10530	

said address(es) having been designated (by said Attorney[s]) for that
 purpose, by depositing a true copy(ies) of same enclosed in a postpaid
 properly addressed wrapper(s), First Class Mail, in a post office
 official depository under the exclusive care and custody of the United
 States Postal Service within New York State.

Sworn to before me
 June 26th, 2007.


 William J. Knoesel

NOTARY PUBLIC
 MARSHALL E. BLOOMFIELD
 Notary Public, State of New York
 No. 02BL0326550
 Qualified in the County of The Bronx
 Commission Expires June 30, 2011

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MEMORANDUM OF LAW IN SUPPORT OF PETITIONER-JUDGMENT
CREDITOR'S NOTICE OF MOTION TO REMAND

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